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Route To:

Subject: Advice on Documenting "Best Available Science"

To: Regional Planning Directors

A recent court ruling enjoined the Forest Service from implementing the 2005 planning rule on three counts regarding National Environmental Policy Act (NEPA), the Endangered Species Act, and the Administrative Procedure Act (*Citizens for Better Forestry v. USDA*). As a result, we are operating under the 2004 interpretive rule and questions have been raised about documenting consideration of "best available science" in forest plan and project records.

The 2004 interpretive rule states "Projects implementing land management plans and plan amendments...must be developed considering the best available science in accordance with 219.36 (a) ... and must be consistent with the provisions of the governing plan" (Appendix B to §219.35). In plain language, the stated rule language means that projects proposed and carried out must be consistent with the forest plan and show consideration of "best available science."

With the above in mind, the Ecosystems Management Coordination (EMC) staff developed the following recommendations for documenting consideration of best available science in planning and project level environmental analyses.

- What constitutes best available science might vary over time and across scientific disciplines. As a general matter, we show consideration of the best available science when we insure the scientific integrity of the discussions and analyses in the project NEPA document. Specifically, the NEPA document should identify methods used, reference scientific sources relied on, discuss responsible opposing views, and disclose incomplete or unavailable information, scientific uncertainty, and risk. See 40 CFR, 1502.9 (b), 1502.22, 1502.24.
- The project record should reference all scientific information considered: papers, reports, literature reviews, review citations, peer reviews, science consistency reviews, results of ground-based observations, and so on. The specialists report in the record should include a discussion substantiating that consideration of the aforementioned material was a consideration of the best available science.
- The Responsible Official should include a statement in the record of decision, decision notice or decision memo showing consideration of the best available science as the basis for the decision. For example: "My conclusion is based on a review of the record that shows a thorough review of relevant scientific information, a consideration of responsible



opposing views, and the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk” and then briefly mention specific things from the record.

Please share this memo with all forest supervisors and district rangers and consider the above advice when conducting environmental analyses in your region. Direct questions to Ron Pugh, Planning Specialist (202) 205-0992, or JoEllen Keil, NEPA Specialist at (202) 205-0939.

/s/ Richard J. Cook
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